# In the Supreme Court of the United States

OCTOBER TERM, 1976

## NO. 76-303 MISC.

CONSTANTINOS STAMATINOS,

*Petitioner,*

*vs.*

W. O. MEHRTENS, DISTRICT JUDGE and THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, a labor organization,

*Respondents.*

## BRIEF OF RESPONDENT—INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS and/or CERTIORARI

Respectfully submitted,

PLATO E. PAPPS
General Counsel, IAMAW
1300 Connecticut Avenue, N.W.
Washington, D.C. 20036
and
JOSEPH P. MANNERS
GEORGE H. TUCKER
MANNERS AND AMOON, P.A.
123 Northwest 12th Avenue
Miami, Florida 33128

*Attorneys for Respondent-IAMAW*

MIAMI REVIEW — 371-4853 — 377-3721

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**BRIEF OF RESPONDENT—INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS and/or CERTIORARI**

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## JURISDICTION TO REVIEW

The Petitioner invokes the jurisdiction of this Court pursuant to 28 U.S.C. §1651(a), and Supreme Court Rule 19. The Respondent takes issue with the applicability of Supreme Court Rule 19 and believes that Supreme Court Rules 30 and 31 are the rules applicable to a Petition for a Writ authorized by 28 U.S.C. §1651(a).

## QUESTION PRESENTED

1. WHETHER THIS PETITION SHOULD BE ENTERTAINED BY THE COURT IN THAT:

(a) THE INSTANT CASE DOES NOT PRESENT A SITUATION SUFFICIENTLY EXCEPTIONAL TO WARRANT THE ISSUANCE OF EITHER A WRIT OF MANDAMUS OR A WRIT OF CERTIORARI PURSUANT TO 28 U.S.C. §1651(a).

(b) THE FACTS AND CIRCUMSTANCES OF THIS CASE REQUIRE APPLICATION TO THE FIFTH CIRCUIT COURT OF APPEALS FOR ITS CONSIDERATION AS TO WHETHER A WRIT OF MANDAMUS SHOULD ISSUE.

(c) THE INSTANT CASE DOES NOT PRESENT ISSUES EITHER SUFFICIENTLY UNIQUE OR IMPORTANT TO NECESSITATE CERTIORARI REVIEW PURSUANT TO 28 U.S.C. §1254 AND SUPREME COURT RULE 19.



## STATEMENT OF CASE

The jurisdiction of the District Court was invoked pursuant to a claim arising under the Railway Labor Act, 45 U.S.C. 151 *et seq.*

The Petitioner filed suit against the Respondent Union alleging that the Union breached its duty of fair representation by failing to allow the Petitioner's wife, Mrs. Stamatinos, to exclusively represent and control the presentation of Petitioner's grievance before the February 2nd, 1970 Four Man System Board of Adjustment. The Petitioner alleges no wrongdoing by the Union prior to February 2nd, 1970.

On February 2nd, 1970, prior to the hearing, the Stamatinos met with the Union representatives and requested that Mrs. Stamatinos represent her husband before the System Board of Adjustment to be assisted by another Union representative. The Union representative, Sutherland, who had authorized this arbitration by his submission to the Four Member System Board of Adjustment, explained that he was in charge and that the Petitioner's personal representatives, including his wife and attorney, could assist. He further explained that this was the way he had always handled discharge cases as it was the Union's duty to administer the provisions of the Collective Bargaining Agreement. This was the way he was going to handle this case which he had prepared to move forward and somewhere along the line was hopeful of winning.

The hearing took place, and Mrs. Stamatinos did assist in the proceeding to the point where her conduct could be characterized as vociferous and at times, hyperactive. No objections or statements as to the Union representation of the Petitioner were made to the System Board of Adjustment by either the Petitioner or his wife, nor did either state that they wanted Mrs. Stamatinos to represent the Petitioner. Petitioner's attorney, who was also present during the latter part of the hearing, was heard by the System Board of Adjustment. The hearing was concluded with the request from the Union representative through Petitioner's attorney urging that the System Board of Adjustment permit certain documents which Petitioner's attorney was going to obtain and serve upon opposing counsel to be introduced at a later date. However, the documents were not forthcoming! Without consulting with his attorney or the Union, the Petitioner unilaterally prepared and transmitted the telegram dated February 9th, 1970, which stated:

> "Due to violation of provisions of the agreement and the nature of the proceedings which were also in violation of my constitutional rights, this is to notify you that I do not recognize the proceedings of the system board of adjustment held February 2, in Miami as legal or valid, nor will I accept any decision that may be rendered as a result thereof."

The Petitioner also directed his attorney not to send the documents and thus, the documents were never sent, (nor was anyone told that the documents were never to be sent). The Union, through its representative, was completely surprised by the February 9th, 1970 telegram. The System



Board of Adjustment proceedings ground to a halt and were never concluded. And, despite subsequent efforts by the Union to move the System Board of Adjustment to a decision, no decision was rendered.

The District Court acted upon the Union's Motion for Summary Judgment which encompassed all the allegations contained in both the Amended Complaint and the Second Amended Complaint filed on September 15, 1975. The court, after considering all the pleadings, exhibits, (including the three alleged omitted pages of the February 2nd, 1970 hearing), and affidavits, submitted by both parties, rendered its October 24th, 1975 Order and Final Judgment and found that there was no material issue of fact and that the Union, at all times, acted in an honest and good faith, non-discriminatory manner toward the Petitioner as evidenced by the Union's presentation before the Four Man System Board of Adjustment, the participation of Petitioner's representatives at the hearing, and the Union's readiness and willingness to have proceeded further with the Petitioner's grievance but for Petitioner's telegram of February 9th, 1970, and his failure to produce promised documents to the System Board of Adjustment.

On Petitioner's Appeal, the Court of Appeals affirmed per curium the Order and Final Judgment rendered by the District Court.

## ARGUMENT

1. THIS PETITION SHOULD NOT BE ENTERTAINED BY THE COURT IN THAT:

(a) THE INSTANT CASE DOES NOT PRESENT A SITUATION SUFFICIENTLY EXCEPTIONAL TO WARRANT THE ISSUANCE OF EITHER A WRIT OF MANDAMUS OR A WRIT OF CERTIORARI PURSUANT TO 28 U.S.C. §1651(a).

The issuance by the court of any writ authorized by 28 U.S.C. §1651(a) is not a matter of right but of sound discretion. This discretion concerning the issuance of extraordinary writs should be sparingly exercised as they are drastic and extraordinary remedies reserved for extraordinary cases. Supreme Court Rule 30; *Ex parte Fahey*, 332 U.S. 258, 91 L.Ed. 2041, 67 S.Ct. 1558 (1947); *Will v. United States*, 389 U.S. 90, 19 L.Ed.2d 305, 88 S.Ct. 269 (1967); *Ex parte Peru*, 318 U.S. 578, 87 L.Ed. 1014, 63 S.Ct. 793 (1943); *Parr v. United States*, 351 U.S. 513, 100 L.Ed. 1377, 76 S.Ct. 912 (1956). Moreover, the extraordinary writs may not be utilized as substitutes for the ordinary appellate procedures whenever it is claimed that the lower court has acted beyond its jurisdiction. The writs are to be used only when, for some special reason, remedy by appeal does not provide an adequate remedy. *Bankers Life Co. v. Holland*, 346 U.S. 379, 98 L.Ed. 106, 74 S.Ct. 145 (1953).

The writs of mandamus, certiorari, and prohibition, although to some extent serving different functions, do overlap and the same general principles are utilized in determining their applicability [See *Ex parte Collett*, 337 U.S. 55, 93 L.Ed. 1207, 69 S.Ct. 944 (1949); *Kilpatrick v. Texas Pacific Railway*, 337 U.S. 75, 93 L.Ed. 1223, 69 S.Ct. 953 (1949); *United States v. National City Lines*, 337 U.S. 78, 93 L.Ed. 1226, 69 S.Ct. 959 (1949) in which the court decided each case on the merits without noticing the differences among the writs.] Generally, extraordinary writs are utilized either to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so; [*Roche v. Evaporated Milk Association*, 319 U.S. 21, 87 L.Ed. 1185, 63 S.Ct. 938 (1943); *Will v. United States*, supra]; or to compel a lower court to comply with the mandate of an appellate court; [In Re *Sanford Fork and Tool Co.*, 160 U.S. 247, 40 L.Ed. 414, 16 S.Ct. 291 (1895)]; or to preserve the appellate jurisdiction of the Supreme Court which would be defeated by unlawful action of a lower court case; [*Ex parte United States*, 287 U.S. 241, 77 L.Ed. 283, 53 S.Ct. 129 (1932)]. The latter two instances are inapplicable to the instant case. And, only exceptional circumstances amounting to a judicial usurpation of power will justify the invocation of these writs. *DeBeers Consolidated Mines, Ltd. v. United States*, 325 U.S. 212, 89 L.Ed. 1566, 65 S.Ct. 1130 (1945).



The instant case falls far short of presenting a situation sufficiently exceptional to warrant the issuance of either the writ of mandamus or certiorari.

The District Court, pursuant to its prescribed jurisdiction and authority under Rule 56, Federal Rules of Civil Procedure, determined, after considering all the pleadings, exhibits, and affidavits, that there existed no issue of material fact and that the Union was entitled to

judgment as a matter of law. The Union's Motion for Summary Judgment and/or Motion to Dismiss on the Pleadings, although filed prior to Petitioner's Second Amended Complaint, encompassed all the allegations contained in that Second Amended Complaint. And, the Court, it is important to note, did not rule upon the Union's Motion until AFTER the Second Amended Complaint had been filed. Thus, it was of no consequence when the Motion for Summary Judgment was filed in light of the fact that the Court, pursuant to its prescribed jurisdiction, ruled upon the Motion after considering the allegations contained in the Second Amended Complaint.

Moreover, any questions as to the existence of material facts rested within the discretionary powers of the District Court. Clearly, the Petitioner's Reasons for Granting the Writ all relate to the propriety of the District Court's Order granting Summary Judgment and these issues either were raised or should have been raised in the Court of Appeals. The Petitioner, through this Petition for Writ of Mandamus and/or Certiorari, is again seeking review of the same issues which were considered and affirmed through the ordinary appellate process.

The Petitioner's assertion that three pages were deliberately omitted from an exhibit filed with the Union's Motion for Summary Judgment and/or Motion to Dismiss on the Pleadings is untrue and has no basis in fact. The alleged three omitted pages from the Transcript of the February 2nd, 1970 hearing before the System Board of Adjustment were, in fact, filed with the Union's Motion and were part of the original record which was considered by the District Court. The Clerk of the District Court for



the Southern District of Florida has certified that these alleged omitted pages are contained in the file. (See Appendix I.)

Moreover, any failure to include the alleged omitted pages in the Appendix before the Court of Appeals lies with the Petitioner's attorney as he has the duty to verify that the Record on Appeal, compiled by the Clerk, contains all the designated portions.

The Petitioner has failed to set forth in a clear and indisputable fashion that the instant case warrants the invocation of this Court's discretionary power to issue the requested extraordinary writs. The District Court, at all times, acted lawfully and within its prescribed jurisdiction and thus, the requested writs should not issue. And, aside from the prior review from the Court of Appeals, the most that can be claimed:

> " . . . is that the district courts have erred in ruling on matters within their jurisdiction. *The extraordinary writs do not reach to such cases;* they may not be used to thwart the congressional policy against piecemeal appeals. *Parr v. United States*, supra, at 520, 521, citing *Roche v. Evaporated Milk Association*, (Emphasis Added).

Accordingly, this Court should deny the instant Petition.

(b) THE FACTS AND CIRCUMSTANCES OF THIS CASE REQUIRE APPLICATION TO THE FIFTH CIRCUIT COURT OF APPEALS FOR ITS CONSIDERATION AS TO WHETHER A WRIT OF MANDAMUS SHOULD ISSUE.

Where an alleged unlawful act has been committed by a court immediately below the Supreme Court, to-wit: a United States Court of Appeals, or a United States District Court in a case directly appealable to the Supreme Court, the application for a writ must be made to the Supreme Court. *Williams v. Simons*, 355 U.S. 49, 2 L.Ed.2d 87, 78 S.Ct. 109 (1957). However, where there is an intermediate appellate court, as in the ordinary case in a United States District Court, the application "ordinarily must be made to the intermediate appellate court". *Ex parte Peru*, supra, at 585. Only when exceptional circumstances exist — does the Supreme Court issue extraordinary writs without prior application to the Court of Appeals. As discussed in subsection (a), supra, no such exceptional situation is presented by the facts of this case and thus, the instant Petition should not be entertained by this Court.

(c) THE INSTANT CASE DOES NOT PRESENT ISSUES EITHER SUFFICIENTLY UNIQUE OR IMPORTANT TO NECESSITATE CERTIORARI REVIEW PURSUANT TO 28 U.S.C. §1254 AND SUPREME COURT RULE 19.

The decision of the District Court and its subsequent affirmance by the Court of Appeals involved a determination that there was no issue of material fact and that the



Union conducted itself in a good faith, non-discriminatory manner toward the Petitioner. The decision rested upon its narrowly circumscribed facts and thus, does not involve any intrinsically important legal questions or any conflicts with cases which would deem review by this Court appropriate.

Moreover, the decision of the District Court, involving substantially the same issues, was affirmed by the Court of Appeals and thus, the propriety of that decision is firmly established.

## CONCLUSION

For all of the foregoing reasons, the Petition for Writ of Mandamus and/or Certiorari should be denied.

Respectfully submitted,

PLATO E. PAPPS
*General Counsel, IAMAW*
1300 Connecticut Avenue, N.W.
Washington, D.C. 20036

and

JOSEPH P. MANNERS
GEORGE H. TUCKER
MANNERS AND AMOON, P.A.
123 Northwest 12th Avenue
Miami, Florida 33128

By: /s/ Joseph P. Manners
JOSEPH P. MANNERS



## CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that three copies of the foregoing Brief of Respondent-International Association of Machinists and Aerospace Workers in Opposition to Petition for Writ of Mandamus and/or Certiorari, was mailed to: Constantinos Stamatinos, 1065 S.W. 75 Avenue, Miami, Florida, 33144, on this 17 day of September, 1976.

MANNERS AND AMOON, P.A.

By: /s/Joseph P. Manners
JOSEPH P. MANNERS

# APPENDIX

## APPENDIX 1

### CERTIFICATION OF THE DISTRICT CLERK OF THE U. S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

I, JOSEPH I. BOGART, District Clerk of the U. S. District Court for the Southern District of Florida, do hereby certify that Pages 2, 3 and 4 from the Transcript of the SBA Proceedings of February 2, 1970, are contained in the District Court file of the case styled STAMATINOS v. THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, a labor organization, Case No. 75-134 CIV-WM. This file in toto was transmitted to the Fifth Circuit Court of Appeals during the pendancy of the appeal and returned to this Court after the Mandate was issued.

JOSEPH I. BOGART, Clerk

BY: /s/ Ruth M. Wood

RUTH M. WOOD, Deputy Clerk

Dated: September 10, 1976